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ABSTRACT

The rapid growth of minimum competency testing (by 1981, 36 states in the United States had mandated some form of minimum competency testing) has led to increased legal challenges of the existing testing programs. Three issues have been raised and are summarized in this brief overview: (1) constitutional claims under the due process clause; (2) equal protection; and (3) negligence or educational malpractice. Several of these issues were raised by the case of Debra P. v. Turlington which challenged the constitutionality of Florida's statewide high school graduation requirements program. The Court found that because Florida's black students had not had 12 full years of racially integrated education, they were therefore subjected to inferior educational opportunities. Such equal protection issues affect racial minorities, those whose native language is not English, and the disabled. Issues related to due process include the speed of implementation of a testing program, test validity, and test reliability. Issues related to educational malpractice suggest that schools will need to document all phases of students' performance. In addition, increased attention will be focused on teacher certification and school accountability. (GDC)

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LEGAL ISSUES IN MINIMUM COMPETENCY TESTING

The minimum competency testing (MCT) movement of the 1970's was one outcome of public concern regarding the effectiveness of elementary and secondary education. Growing concern about declining student scores, reports of functionally illiterate high school graduates, and an over-all malaise affecting the educational process resulted in the widespread implementation of MCT programs throughout the country. Even though most educators and measurement experts agree on the need for educational accountability measures, there has been only minimal agreement on how best to attack these problems. MCT's rapid growth (by 1981, 36 states had mandated some form of MCT) has led to increased legal challenge of existing programs.

Implementation of minimum competency testing programs has raised legal issues in three areas: issues related to constitutional claims under the due process clause, issues related to equal protection, and issues related to negligence. Some of these issues have been addressed in recent court cases while others remain to be tested. Several of these issues have been raised by the landmark decision of Debra P. v. Turlington which challenged the constitutionity of Florida's state-wide high school graduation requirements program. The success of the development and implementation of future MCT programs will largely depend on outcomes of these issues.

ISSUES RELATED TO DUE PROCESS

The due process clause of the Fourteenth Amendment of the U.S. Constitution and most state constitutions requires that the action of the state be rational and reasonably related to a legitimate state objective and that it act in a fair manner when it deprives a citizen of liberty and property. This has direct implications for MCT programs in that courts have found students to have a property interest in their education, such that expulsion from school, even for a short time, requires due process procedures. As a result of this and the decisions of the Debra P. case, two areas of due process violations were covered.

The first area of due process violations raised issues about the administration of the test. Before a program can be implemented, schools must make certain that sufficient time exists between the initiation of the program and the testing date. The courts have ruled that Florida's two years notice of the program implementation and testing was inadequate; students needed to know what the skills and objectives measured by the test were before actual instruction was to begin. The Courts also specified that appropriate remediation be provided for students performing below the accepted standard with repeated chances for re-examination. The Courts found that longer-term remediation programs were needed to bring students up to the standards and ample opportunity was afforded to students for re-examination. The issues of financial support for implementation of these remedial programs rests with the schools, and schools already having a Title I remedial program are faced with the dilemma of supporting the two types of programs.

The second area of due process violations raised issues related to the evolution of the test instrument with special emphasis on validity and reliability issues. Although the Florida test was found to be a "valid test," many questions were raised by the Court and measurement experts with regard to the terms "content validity," "instructional validity," and "curricular validity." The Court determined that Florida must show evidence of the curricular validity of any test administered to students. This suggests that schools need to commit substantial time and effort to the analysis of content coverage on the test, in the curriculum, and in the classroom. Since the Court did not specify how that was to be done, evidence of curricular validity can be demonstrated in several ways: through the analysis of the instructional materials including textbooks, course syllabi, and teachers' lesson plans; and through the collection of data on actual classroom transactions. The measurement community will have to establish the validity and reliability of its MCT efforts and provide more information on the types, form, and level of evidence of the curricular and instructional validity, or curricular match, of tests and administered to students.

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ISSUES RELATED TO EQUAL PROTECTION

Minimum competency testing programs also create concern for equal protection issues especially with regard to protected classes. Three categories of students are affected: racial minority members, those whose native language is other than English, and the handicapped. Challenges based on these issues have been made under constitutional and statutory race discrimination claims, and due process and equal protection challenges to the fairness of the test. The equal protection clause prohibits a state from denying "to any person within its jurisdiction the equal protection to the laws." The clause does not prohibit a state from sorting or classifying individuals or groups of persons into categories, but it does require that such classifications be done rationally, fairly, and with adequate justification. In Debra P., the Court found that Florida Black students had not had the benefit of twelve full years of racially integrated education, and were therefore subjected to inferior educational opportunities. The effect of MCT programs on equal educational opportunity is such that any program that places undue hardship on minority group children will probably not be able to withstand the political and legal challenges it provokes.

ISSUES RELATED TO NEGLIGENCE

Minimum competency testing also raises legal considerations related to negligence and educational malpractice. In the past, courts have been unwilling to review the issue of educational malpractice because of the many implications for teacher accountability and, more specifically, teacher certification and teacher certification requirements. The new focus on competencies may now hold schools accountable for student's inability to function successfully in everyday life. To avoid litigation, schools will need to document all phases of a student's school performance. These and other already mentioned issues will need to be addressed if minimum competency testing programs are to become an integral part of the education process.

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